IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

TRC.No. 275 of 2002

(TA.165/1999 of KERALA AGRICULTURAL INCOMETAX AND SALES TAX APPELLATE TRIBUNAL,ADDL.BENCH,PALAKKAD)

PETITIONER/ APPELLANT/ASSESSEE:

M/S. JANATHA STATIONERY, M.O.ROAD,
THRISSUR.

BY ADV. SRI.B.V.JOY SANKER

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPL. GOVERNMENT PLEADER FOR TAXES SHRI K.B. PRADEEP.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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TAX REVISION CASE No. 275 OF 2002

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Dated this the 4th September, 2007

O R D E R

H.L. Dattu, C.J.:

This Tax Revision case pertains to the assessment year 1993-94.

2. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act. The assessing authority has completed the assessment for the aforesaid year by its order dated 26.03.1998. The said order was the subject of the first appeal and also the second appeal before the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal. The Tribunal, by its order dated 4th February 2002, has dismissed the appeal filed by the assessee. Aggrieved by the aforesaid order passed by the Tribunal, the assessee has filed this Revision Case.

3. The assessee has framed the following questions of law for consideration and decision of this court, which reads as under:

> *"A. Whether on the facts and circumstances of the case has not the Appellate Tribunal gone wrong in upholding the contentions of the State and rejecting the accounts of the assessee only for the reason of mis-classification of the taxable and non-taxable item, which can be ascertained from the books alone?*
>
> *B. Has not the Appellate Tribunal gone wrong in upholding the additions made by the assessing authority to the taxable turnover?"*

4. Section 41 of the Kerala General Sales Tax Act provides for entertaining the revision cases only on two counts. Firstly, if the Tribunal failed to decide the questions of law and secondly, if the Tribunal erroneously decided the questions of law.

5. In the instant case, a reading of the questions of law framed by the assessee would reveal that the questions of law framed by the assessee can never be construed as substantial questions of law which requires consideration and decision of this court. In fact, the questions of law framed by the assessee is in the nature of question of fact rather than questions of law. In that view of the matter, the Revision case requires to be rejected and it is rejected.

6. C.M.P.Nos. 4703 of 2002 and 5851 of 2002 are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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